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REX v. CHUA TENG HOE.

[App. Crim. Juris. (Murray-Aynsley, C.J.) August 2, 1950]

[Singapore — Special Case No. 3 of 1950]

Motor Vehicles (Construction and Use) Rules, 1948, Rules 99 and 102 — Meaning of word "use".

What is forbidden under both Rules 99 and 102 of the Motor Vehicles (Construction and Use) Rules, 1948, is use, and too restricted a meaning should not be placed on the word.

Case referred to :—

(1) *Gifford v. Whittaker* (1942) 1 K.B. 501.

SPECIAL CASE stated under section 317 of the Criminal Procedure Code.

This was a Special Case under section 317 of the Criminal Procedure Code and the memorandum of D. A. Fyfe Esquire, Police Magistrate, Singapore, submitting the case for the opinion of the High Court was as follows :—

"1. At a Police Court held in the Second Traffic Court, Singapore, before the undersigned on the 17th day of May, 1950, one Chua Teng Hoe the abovenamed defendant was charged as follows:—

(1) That you at or about 10.15 a.m. on 17th March, 1950, being the registered owner of motor lorry No. SA. 3634 did permit the said lorry to be used on a public thoroughfare in Beach Road with the cord carcass fabric of both front tyres exposed and thereby committed an offence under Rule 102(2) of the Motor Vehicles (Construction and Use) Rules, 1948.

(2) That you on or about 10.15 a.m. being the registered owner of motor lorry No. SA. 3634 did permit the said lorry to be used on a public thoroughfare in Beach Road whilst it was not equipped with efficient brakes and thereby committed an offence under Rule 15(1) of the Motor Vehicles (Construction and Use) Rules, 1948.

(3) That you on or about 10.15 a.m. on 17th March, 1950, being the registered owner of motor lorry No. SA. 3634 did permit the said lorry to be used on a public thoroughfare in Beach Road whilst it was not equipped with an efficient speedometer, and thereby committed an offence under Rule 85 of the Motor Vehicles (Construction and Use) Rules, 1948.

2. Before the hearing of the charges the prosecution withdrew the third charge, stating that no offence was disclosed, the said motor lorry having been registered in 1946, i.e. before the 1st day of January 1949. I therefore acquitted the defendant on this charge.

3. The defendant then pleaded guilty to the first and second charges. The prosecutor showed that the defendant was the owner of the said vehicle and that he had permitted it to be driven in Beach Road with the canvas fabric exposed on both front tyres and also with inefficient brakes.

4. It was thereupon admitted by the defendant that he was the owner, that the tyres were worn out and that the brakes were inefficient; he contended however that the driver did not inform him of the condition of the vehicle.

5. I thereupon consulted the Motor Vehicles (Construction and Use) Rules, noted that the second alleged offence concerned the use and not the construction of the vehicle, and therefore amended the Rule under which defendant was charged in the second charge from Rule 15(1), a "construction" rule, to Rule 99, a "use" rule. Defendant again pleaded guilty.

6. But I, remembering that I had just previously convicted and sentenced the driver of the same vehicle, vide record of case 3341 also enclosed herewith, for offences under the same rules committed at the same time and place, considered that it was my duty to examine more closely all the Construction and Use Rules, with a view to determining exactly whether the owner or the driver or both should be held responsible for carrying the various Rules, and particularly Rules 102 and 99 into effect.

7. From this examination, having regard to the phraseology of the respective rules in Motor Vehicles (Construction and Use) Rules, Part V, Rules governing the USE of all motor vehicles and trailers, I became of opinion that:—

(a) Rules 88 to 93 place responsibility for their observance solely on the owner.

(b) Rules 100, 106, 108 since they alone include the words "use or cause or permit to be used" place responsibility for their observance on the driver, the owner and any other person who may be concerned.

(c) Rules 107, 109 to 116, refer only to the driver or other person actually in charge of the vehicle on the road.

(d) Rules 94 to 99, 101 to 105, 117 to 124 do not name or clearly suggest what person or persons are responsible for their observance.

8. I was further of opinion that Rules in this class (d) could further be sub-divided as follows:—

Rules 94 — 97 concern lading.
Rules 98, 99, 101 — 104 concern maintenance.
Rules 117, 118, 120 — 123 concern trailers and towing.

Rules 119 and 124 concern fittings.
Rule 105 concerns lavatories etc.

Though not explicit, it appeared to me to be implicit from these sub-headings that the responsibility for lading, maintenance and towing rested on the driver or other person actually in charge of the vehicle, and that the responsibility in Rules 119 and 124 rested on the owner, and that the responsibility in Rule 105 rested on the user.

9. I therefore, being of opinion that defendant, the owner, was not lawfully responsible for failure to comply with Rules 99 and 102, and that he should not have been charged in the words "did permit the said lorry to be used", held that he should be acquitted on both charges.

10. The question for the opinion of this Court is whether the said determination was correct in point of law and what should be done in the premises.

11. Semble. It would be of great value to the Traffic Courts if this Court would check the whole of the analysis in my paragraphs above, and express an opinion for our future guidance on the question of what class of person or persons may properly be charged for offences under any of the Rules 98 to 124."

Murray-Aynsley, C.J. : — What is forbidden under both Rules 99 and 102 of the Motor Vehicles (Construction and Use) Rules, 1948, is use. Clearly the driver uses a vehicle. I do not think that only the driver uses a vehicle. When an owner is in possession and a vehicle is used for his business I think the owner can fairly be said to use it. On the contrary, an owner

may be a party to a hire-purchase agreement and not in possession. Then he could not be said to use it. The same would be the case if a vehicle were taken out without permission of the owner. The only English case I can find on the subject is *Gifford v. Whittaker*[1]. There the question was whether a driver was using a vehicle. That case, does, however, support the proposition that at one time there may be several persons "using" a vehicle in different ways and too restricted a meaning should not be placed on the word.

Reference answered.

ARATHOON SONS LIMITED v. BUAN LEE SENG LIMITED.

[App. Civ. Juris. (Murray-Aynsley, C.J.)
November 24, 1950]

[Singapore — District Court Appeal No. 4 of 1950]

Landlord and tenant — Control of Rent Ordinance, 1947, s. 14(1)(f) — Reasonably required by landlord — Bona fide claim.

This was a claim for possession of certain business premises on the ground that the landlord reasonably required the premises for his own occupation.

Held, that the landlord has to prove that he reasonably requires the premises for his own occupation and that the question of **bona fides** of the claim is always one which the Court must examine carefully in the case of business premises which are usually more valuable when vacant than when let.

APPEAL from the Civil District Court.

F. R. N. H. Massey for the appellants.

R. H. Green for the respondents.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — This appeal arises out of proceedings by the appellants for possession of certain premises not used as a dwelling house.

The appellants based their claim to a judgment for possession on section 14(1)(f) of the Control of Rent Ordinance. The conditions under (ii) of that part of the sub-section have been complied with.

The learned District Judge gave judgment in favour of the respondents on the strength of his finding of fact that the appellants did not reasonably require the premises for their own occupation. To put the matter briefly he found that the claim was not made *bona fide* and that the appellants sought to obtain a judgment for possession in order to extort an extravagant price from the respondents.

As business premises are usually more valuable when vacant than when let, the question of *bona fides* is always one which the Court must examine carefully in cases of this kind.

On this the relevant passage of the judgment is as follows :—

"This brings me to the second question which is, have the plaintiffs proved that they, as owners 'reasonably require the premises for their occupation?' The onus of proving reasonable requirement is on the plaintiffs. It is obvious, I think, that for some considerable time the plaintiffs have wanted possession of these premises. But, in the light of the evidence before me to tell me that they reasonably require the premises for **their own occupation** is to tell me what I do not believe. The plaintiffs say that they require this godown for packing and stacking copra prior to shipment and for salting, preparing, measuring, packing and storing skins before shipment. But, it is admitted that the godown is damp and that the laying out of salted skins would make it more so, and that therefore it would be most inadvisable to store copra there. Furthermore, the plaintiffs have for some time been negotiating with the defendants for the sale of this godown to the defendants, and as recently as October 1949 Mr. Arathoon told Mr. Tan Siak Kew that he would consider a sale 'if the price was correct', a figure of $15/- a square foot having previously been suggested by Mr. Arathoon. This price was far too high for the defendants, being about four times the market value. In face of these facts I am satisfied that the plaintiffs want possession of these premises, not for their own occupation as they would have me believe, but in the hope that they may thereby compel the defendants to purchase the premises at their price. I am satisfied, therefore, that the plaintiffs have not discharged this onus. It follows that the plaintiffs cannot succeed in their claim."

It has to be considered whether on the evidence this finding is justified. It is, it will be seen, an inference based on certain findings of fact. Are the findings of fact or the inference justified?

In the present case the premises are of a peculiar character. They occupy a site in the interior of a block at a considerable distance from a street. They could probably only be used economically by occupiers of adjoining land; adjoining lots are occupied by the appellants and the respondents respectively.

The appellants have been trying to obtain possession of the premises since 1946. In the first proceedings before the Rent Board the application was apparently based on the state of the premises.

The second proceedings took place in 1948 in the District Court. The application was based on (f) and (m) of section 14(1).

They failed on the grounds that the conditions under (i) and (ii) of (f) were not satisfied, and under (m) no alternative accommodation was available. The learned District Judge did, however, find that the appellants needed the premises for their own occupation and he went on to state that he would have found for the appellants on the question of greater hardship under